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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 159

FREDERICK C. LYNCH, PETITIONER,

vs.

WINFRED OVERHOLSER, SUPERINTENDENT, ST. ELIZABETHS HOSPITAL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 17, 1961
CERTIORARI GRANTED JUNE 19, 1961

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 159

FREDERICK C. LYNCH, PETITIONER,

vs.

WINFRED OVERHOLSER, SUPERINTENDENT, ST. ELIZABETHS HOSPITAL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

INDEX

[fol. a] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15859

WINFRED OVERHOLSER, SUPERINTENDENT, ST. ELIZABETHS HOSPITAL, Appellant,

v.

FREDERICK C. LYNCH, Appellee

Appeal from the United States District Court for the District of Columbia

JOINT APPENDIX—Filed August 9, 1960

[fol. 1] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Habeas Corpus 130-60

FREDERICK C. LYNCH,

v.

WINFRED OVERHOLSER

James Mitchell Jones, 1507 M St., N.W.
Lawrence Spencer, American Civil Liberties Union, 1612 Eye St., N.W.; Richard Arnes, Headquarters Bldg., Dupont Circle.

Date 1960	Docket Entries

Jun 13—Petition for writ of habeas corpus & affidavit of poverty filed. Without prepayment of costs.

Jun 13—Order authorizing filing and for writ to issue returnable June 16, 1960 at 10:00 a.m. Tamm, J.

Jun 13—Writ and copy issued: served: 6-13-60.

Jun 16—Return and answer to petition of habeas corpus c/s 6-16-60, exhibit "A" App. Oscar Altschuler.

Jun 16—Supplemental return and answer to writ of habeas corpus.

Jun 20—Transcript of Proceedings; Edna B. Romig, Reporter, June 16, 1960 Pgs. 1-16.

June 27—Order that the writ of habeas corpus shall issue and the petitioner restored to liberty unless within 10 days civil proceedings for commitment of petitioner shall be institute' (N) McGarraghy, J. Micro 6-28-60.

July 1—Notice of Appeal of deft. copies mailed to Richard Arens, James M. Jones & Lawrence Speiser.

July 1—Request for stay of effectiveness of Court's Order of June 27th, 1960, pending disposition of case by U. S. Court of Appeals denied (fiat) (N) McGarraghy, J.

July 6—Order that Clerk transmit original record and transcript of proceedings to Court of Appeals forthwith McGuire, J.

[fol. 2] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Habeas Corpus No. 130-60

In the matter of FREDERICK C. LYNCH

Address of Petitioner:
St. Elizabeths Hospital
Washington, D. C.

PETITION FOR WRIT OF HABEAS CORPUS—Filed June 13, 1960

Comes now the Petitioner, Frederick C. Lynch, by his counsel, and represents to the Court as follows:

I

Petitioner, Frederick C. Lynch, is confined, detained and restrained of his liberty by one Winfred D. Overholser, Superintendent of St. Elizabeths Hospital.

II

The pretended cause for such confinement is a judgment of acquittal by reason of insanity followed by an order of commitment to St. Elizabeths Hospital, entered by the Municipal Court for the District of Columbia in criminal proceeding No. U. S. 7736-59 on December 29, 1959, purportedly pursuant to authority furnished by Section 301 of Title 24 of the D. C. Code.

III

The confinement of Petitioner is illegal and the illegality thereof consists in this:

A. The Petitioner was acquitted by reason of insanity notwithstanding the fact that he had been medically and judicially recognized as competent to stand trial and had sought to enter a plea of guilty to the charge of uttering a check with intent to defraud, then pending against him.

The refusal of the Court to accept the plea of guilty under the circumstances of the herein case deprived the Petitioner of his liberty without due process of law, since the acquittal by reason of insanity resulted and is resulting in his confinement for an indefinite and prolonged period [fol. 3] and perhaps for life whereas a judgment of guilty on the charge of the instant case, to wit, uttering a check with intent to defraud, with Petitioner having no prior record, would have resulted in probation or a fine.

B. Moreover, under the facts outlined, an impossible burden was cast upon Petitioner in the rebuttal of the psychiatric evidence. For in this context, loss of liberty was not conditioned upon the establishment of the insanity of the Petitioner by proof beyond reasonable doubt, or by a fair preponderance of evidence or by substantial evidence or under any other standard cognizable in judicial or administrative proceedings, but was conditioned instead upon the casting of the slightest doubt, provided that it be called reasonable, upon the Petitioner's sanity. The jeopardy of human liberty upon the basis of a standard fit for Caesar's wife blatantly defies every axiom of democratic justice. See *In re William M. Bryant*, 3 Mackey 489, 14 D. C. 489 (1885); Barry v. Hall, 68 App. D. C. 350, 98 F. 2d 22 (1938); *Tatum* v. *United States*, 88 U. S. App. D. C. 386, 190 F. 2d 612 (1951).

C. Commitment to a mental hospital under the circumstances outlined also violates the safeguards of the civil commitment law embodied in Title 21, D. C. Code, Section 306 et seq. Thus, if this commitment be permitted to stand, the mere establishment of a reasonable doubt of mental health could result in the instant confinement in a mental hospital, without benefit of jury, Mental Health Commission or District Court proceeding, including jury trial, of any citizen facing the Municipal Court upon the basis of a parking ticket. The Court of Appeals has expressed itself in unambiguous terms upon this issue in *Williams* v. *Overholser*, 259 F. 2d 175 (D. C. Cir. 1958).

D. Even if the judicial initiative in the presentation of the evidence of Petitioner's insanity be condoned, the auto-

matic commitment of Petitioner without evidence and a judicial finding of *present* dangerousness must be deemed a loss of liberty without due process of law. *In re William M. Bryant, supra; Barry* v. *Hall, supra.*

[fol. 4] E. Petitioner has been deprived of his liberty without due process of law in that Section 301 of Title 24 of the D. C. Code is unconstitutional on its face and as construed and applied in the instant case in violating the due process clause of the Fifth Amendment to the United States Constitution in that

1. Section 301(d), properly construed, applies only to defendants who affirmatively raise the insanity defense.

2. Section 301 of Title 24 of the D. C. Code fails to provide that a judicial finding must be made upon competent and substantial evidence that a defendant is at the time of trial (and not just at the time of the act charged) mentally ill and socially dangerous requiring immediate commitment to a mental hospital *or* in the alternative, requiring an immediate report back to the Court with a full hearing within a few days after an automatic commitment for a judicial finding of present social dangerousness requiring further treatment and deprivation of liberty in a mental institution.

WHEREFORE, Petitioner prays:

(1) That a writ of habeas corpus be granted and issued, directed to the said Winfred D. Overholser, commanding him to produce the body of Petitioner before a judge of this Court at a time and place therein to be specified, then and there to receive and do what shall be ordered herein in that behalf.

(2) That Petitioner be restored to his liberty.

(3) For a declaration that Section 301 of Title 24 of the D. C. Code is unconstitutional and void.

(4) For such and further relief as to the Court may seem just and proper.

Frederick C. Lynch, Petitioner.

Subscribed and sworn to before me this 3rd day of June 1960 Morgan J. Trexler, Notary Public D.C.

My Commission Expires May 31, 1963.

Attorneys for Petitioner:

1. Lawrence Speiser, by R.A. c/o American Civil Liberties Union, 1612 I St., N.W.
2. Richard Arens, Headquarters Bldg., at Dupont Circle, Washington 6, D.C.
3. James Mitchell Jones, by R.A. 1507 M Street, N.W., Washington, D.C.

(Appointed by Municipal Court)

[fol. 5] Let this Writ issue, returnable the 16th day of June, 1960, at 10:00 AM, dated June 10, 1960.

Edward A. Tamm, Judge.

[fol. 6] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Habeas Corpus No. 130-60

FREDERICK C. LYNCH,

vs.

WINFRED D. OVERHOLZER

PAUPER AFFIDAVIT AND ORDER—Filed June 13, 1960

AFFIDAVIT OF FREDERICK C. LYNCH

I, the above-named affiant, being duly sworn according to law depose and say that I am the petitioner in the above-entitled proceeding; that I am a citizen of the United States; that I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the nature of my action is briefly stated as follows:

I was committed to St. Elizabeth's Hospital by the Municipal Court on the basis of an acquittal by reason of

insanity nothwithstanding the fact that I was held judicially competent and sought to enter a guilty plea.

Frederick C. Lynch.

Sworn to and subscribed before me this 3rd day of June 1960.

Morgan J. Trexler, Notary Public D.C.

My Commission Expires May 31, 1963.

ORDER OF COURT

It is Ordered that the petitioner in the above-entitled proceeding be and he hereby is permitted to prosecute said proceeding to conclusion without prepayment of fees or costs or security thereof.

Edward A. Tamm, District Judge.

Dated: June 10, 1960.

[fol. 7] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Habeas Corpus No. 130-60

In re FREDERICK C. LYNCH, Petitioner

RETURN AND ANSWER TO PETITION OF HABEAS CORPUS— Filed June 16, 1960.

The return and answer on behalf of Dr. Winfred Overholser, Superintendent, Saint Elizabeths Hospital, respectfully represents to the Court:

The petitioner, Frederick C. Lynch, in his petition for writ of habeas corpus alleges that he is illegally detained at Saint Elizabeths Hospital, Washington, D.C., by the Superintendent of Saint Elizabeths Hospital. The respondent admits that the petitioner is confined in Saint Elizabeths Hospital but denies that such detenion is illegal or unlawful.

The peitioner, Frederick C. Lynch, was admitted to Saint Elizabeths Hospital on December 29, 1959, by order of the Municipal Court for the District of Columbia, pursuant to the provisions of Title 24, Section 301(d), of the District of Columbia Code, as amended, after having been found not guilty by reason of insanity on charges of Passing Bad Checks, Criminal Numbers U.S. 7736-59 and 7737-59.

Certified copies of his commitment papers are attached hereto, marked Exhibit "A", and prayed to be read as part of this return.

The petitioner, Frederick C. Lynch, has failed to allege that the respondent is acting arbitrarily and capriciously in failing to certify him for release.

The petitioner, Frederick C. Lynch, does not allege that he is of sound mind.

During this petitioner's period of confinement in Saint Elizabeths Hospital, he has been under the care and observation of the respondent, as well as other members of the medical staff of Saint Elizabeths Hospital, skilled in the care, diagnosis and treatment of nervous and mental disorders, who are of the opinion that he has not recovered from his abnormal mental condition, to wit: Manic-Depressive Reaction, Manic Type, and the respondent is [fol. 8] therefore unable to certify that the petitioner will not be dangerous to himself or others within the reasonable future, by reason of his mental disorder.

WHEREFORE, the premises considered, the respondent prays that the writ herein be discharged, the petition dismissed, and the petitioner remanded to the custody of the respondent.

Winfred Overholser, M.D., Superintendent, Saint Elizabeths Hospital

---

Duly sworn to by Winfred Overholzer, jurat omitted in printing.

Copy handed to Pet. in Court 16th day of June, 1960.

Oscar Altshuler.

[fol. 9] Filed June 16, 1960. Harry M. Hull, Clerk

"EXHIBIT A" TO RETURN AND ANSWER

IN THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA, CRIMINAL DIVISION

Case No. US 7736.7-'59

CITY OF WASHINGTON,
District of Columbia,

To the Superintendent of St. Elizabeth's Hospital:

Receive into your custody the body of Frederick C. Lynch, herewith sent by the Municipal Court, brought before said Court charged upon the oath of A. P. Ennis. The Court having found the accused not guilty on the ground that he was insane at the time of the commission of the offense, the Court orders the accused committed to St. Elizabeth's Hospital, pursuant to Public Law 313—84th Congress, Chapter 673, 1st Session.

Further Ordered that the defendant be committed to the District of Columbia General Hospital until such time as the proper facilities are available at St. Elizabeth's Hospital.

Therefore safely keep in your custody until—he shall be discharged by due course of law; and for so doing this shall be your sufficient order.

Witness, The Honorable John Lewis Smith, Jr., Chief Judge of The Municipal Court for the District of Columbia, and the seal of said Court this 29th day of December, A.D. 1959.

Walter F. Bramhall, Clerk, The Municipal Court, D.C. By Joseph S. M. Burton, Deputy Clerk.

Precinct No. ——

Subscribed and sworn to before me this 15th day of June, 1960.

William F. Edwards, Notary Public, D. C.

Certified a true copy: P. M. Lehman, Registrar, Saint Elizabeths Hospital, Washington 20, D. C.

[fol. 10] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Habeas Corpus No. 130-60

FREDERICK C. LYNCH,

v.

DR. WINFRED OVERHOLSER

SUPPLEMENTAL RETURN AND ANSWER - filed June 16, 1960

Comes now the respondent, Dr. Winfred Overholser, by his attorney, the United States Attorney for the District of Columbia, and makes the following return and answer to the writ issued in this cause.

1. Petitioner, Frederick C. Lynch was committed to St. Elizabeths Hospital December 29, 1959, by order of the Municipal Court for the District of Columbia after having been found not guilty by reason of insanity in Criminal Cases Nos. U.S. 7736-59 and 7737-59, pursuant to 24 D. C. Code, Section 301, as amended.

2. On June 13, 1960, a petition for a writ of habeas corpus, prepared by counsel for petitioner, was permitted by the Court to be filed in forma pauperis.

3. Petitioner alleges that his commitment is invalid for lack of due process, and that Section 301, Title 24, D. C. Code, as amended, is unconstitutional.

4. The contention that petitioner was entitled to a separate judicial hearing to determine whether he was insane at the time of trial is essentially one which was rejected by our Court of Appeals in regard to 24 D.C. Code, Section 301 before it was amended in 1955 by making commitment mandatory instead of discretionary after a verdict of not guilty by reason of insanity. *Orencia* v. *Overholser*, 82 U. S. App. D.C. 285, 163 F.2d 763 (1947). It should also be noted that before enacting the 1955 amendment, Congress had before it a Report of the Committee on Mental Disorder as a Criminal Defense, Council of Law Enforce-

ment of the District of Columbia which outlined the commitment procedures of all jurisdictions of the United States and observed that "In 10 states and in England the Court [fol. 11] is required to forthwith commit the person (found not guilty by reason of insanity) to a mental hospital."

5. There is no allegation by petitioner that the evidence does not support a verdict of not guilty by reason of insanity as of the time of the commission of the crime. And this presumption of insanity continues until otherwise rebutted as required by law. *Barry* v. *White*, 62 App. D.C. 69, 64 F.2d 707 (1933); *Orencia* v. *Overholser, supra; People v. Lamb*, 118 N.Y. Supp. 389 (1909), cited by our Court of Appeals with approval in *Barry* v. *White, supra.* Following such a verdict a defendant must be committed to a mental hospital under the mandate of Congress as expressed in 24 D.C. Code, Section 301, as amended. During the five years of the statute, the numerous commitments in the District Court, and the opinions of the Court of Appeals, including many habeas corpus cases alleging illegal detention at Saint Elizabeth's Hospital, are all strong indications that our Court of Appeals upholds the validity of the mandatory commitment procedure as well as the statute.

6. It should also be observed that petitioner does not claim that he is not presently suffering from an abnormal mental condition and that if released that he would not be dangerous to himself or others in the reasonably foreseeable future; nor does he allege that the superintendent of the hospital is arbitrary or capricious in failing to certify his release in accordance with the statute.

Wherefore, it is respectfully submitted that the petitioner is lawfully detained in the custody of the respondent, that his petition should be dismissed and the writ be discharged.

(s) Oliver Gasch, United States Attorney. (s) Edward P. Troxell, Principal Assistant United States Attorney. (s) Oscar Altschuler, Assistant United States Attorney.

[fol. 12] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Habeas Corpus No. 130-60

FREDERICK C. LYNCH, Petitioner,

v.

WINFRED D. OVERHOLSER, Respondent

Washington, D.C.,
Thursday, June 16, 1960

Transcript of proceedings

STATEMENT BY COUNSEL FOR PETITIONER

Mr. Arens. Essentially, if Your Honor please, the issue before the Court, and I shall proceed to the statement of facts as briefly as possible hereafter, is whether an individual defendant who has been medically and judicially recognized as competent when charged with crime can have an insanity defense foisted upon him against his will by action of the Court or the Government.

The facts of this are extremely simple and illustrate the basic issue to which I propose to address myself at this time. The petitioner had been charged in the Municipal Court, the lowest court of the city, with a misdemeanor, specifically, uttering a check with intent to defraud. Apparently he had made out a check with his own name on it. There was no question of forgery and he had no funds and apparently no reason to believe that he had funds to make it good.

[fol. 13] And so he came to the Municipal Court and apparently, upon prima facie evidence of some mental unsoundness being presented, he was transferred to the District of Columbia General Hospital for observation. Thereafter he was brought back to the Municipal Court and attempted to offer a guilty plea. The report from the D.C. General Hospital, if Your Honor please, was that he was mentally competent to stand trial. His guilty plea was not accepted by Chief Judge Lynch in view of the fact the medical report——

The Court. Chief Judge who?

Mr. Arens. I beg your pardon. Chief Judge Smith, Your Honor. In view of the fact the medical report had also asserted that the defendant was suffering from a mental illness and that his crime, which he admitted, was a product thereof.

Some evidence was heard, at either the behest of the Government or that of the Chief Judge of the Municipal Court. A psychiatrist specifically testified, and I believe there will be no dispute upon that subject, upon the part of the Government, although I was not present and I recall to this Court upon the basis of information and belief, a psychiatrist was called to testify and his testimony repeated the substance of his medical report. This man was mentally competent to stand trial; however, he was suffering from a mental illness and his crime, which incidentally is admitted, was the product of the mental disease in this case. All of this evidence, if Your Honor please, was produced over objection of petitioner's counsel, who is not in court at this time.

Chief Judge of the Municipal Court found the defendant not guilty by reason of insanity and committed him, pursuant to Section 301, Title 24 of the D.C. Code, on December 29, 1959. And the petitioner's allegation respectfully submitted to this Court is that this commitment is illegal and that a defendant, who is mentally competent to stand trial, has a right to interpose a guilty plea and to be sentenced upon that basis, and that if the Government wishes to secure his commitment to a mental hospital the proper procedure is through civil commitment proceedings provided for under Title 21 of the D.C. Code, because the results in this particular case are simple. They are plain for all [fol. 14] of us to see. The defendant, who otherwise would have gotten probation or a fine in view of what had previously been a spotless record, may now spend the rest of his life in a mental hospital, and that upon adjudication which was extremely cursory when compared to those available to him under the civil commitment law.

Of course the decision in *Durham*, as Your Honor knows, has facilitated the acquittal of defendants by reason of insanity. This defendant in effect was called upon to defend himself not upon the charge of uttering a check with

intent to defraud, he was called upon to defend himself against the charge of insanity. And this insanity, if Your Honor please, did not have to be proved beyond a reasonable doubt. It did not have to be proved by substantial evidence. It sufficed, under the Durham rule as interpreted by the United States Court of Appeals, that there was some reasonable doubt of insanity, to order this particular person committed. And I respectfully submit that neither Congress nor the Court of Appeals has visualized the situation whereby an insanity defense can be foisted upon an individual who does not want it, and who is judicially recognized as competent to stand trial for the consequences, would be far-reaching, tragic, and bizarre. Because if this man is permitted to remain at St. Elizabeths Hospital on the basis of this adjudication, and we raise no question at present as to his mental health, then any citizen of the United States—and may I say, Your Honor, in passing, in certain respects the majority of us are law-breakers; we all accumulate traffic tickets for the most part, although of course I cannot speak for everybody in court. I myself have received a traffic ticket on one occasion and have paid for it. On the basis of this particular charge, for example, a man can be brought into Municipal Court and psychiatrists can be gotten to testify that his failure to secure adequate and legal parking space was the result of some nervous unbalance. And may I respectfully call Your Honor's attention to the fact that the Court of Appeals has said we no longer have to prove insanity in the old sense of the word; it suffices if there is the slightest mental disorder which produces the crime to secure the acquital of the defendant by reason of insanity.

• • • • • • •

[fol. 15] COLLOQUY

The COURT. Let me ask you a question. I read your petition originally as constituting an attack on the constitutionality of 301, which requires mandatory commitment to——

Mr. ARENS. That is included in the petition. It is an alternate ground which I in no way withdraw and I shall be very glad to argue that particular ground if Your Honor wishes me to do so.

The Court. Frankly, on that ground I would rule against you. I think the procedures set up in 301 are constitutional and I think they have been sustained by the Court of Appeals in a number of cases.

I am concerned about your other point, however. That is the point of a man who had been found competent to stand trial, and wanted to enter a plea of guilty, were not permitted to do so, and then stood trial, as I understand your contention, and was found not guilty by reason of insanity and was then committed to St. Elizabeths in such a proceeding rather than proceedings established for the purpose of determining whether or not he was presently of unsound mind. Is that your point?

Mr. Arens. That is the principal contention of petitioner. There is an alternate point, which I gather Your Honor has already ruled on.

The Court. Yes. I will rule on the other one against you. But I am very much impressed by the first point you made.

I will hear from the Government.

STATEMENT BY COUNSEL FOR RESPONDENT

Mr. Altshuler. I have here, Your Honor may be interested in reading, the report of the psychiatrist who testified in the case as counsel stated.

The Court. My sole problem is this: In a criminal case, in the Municipal Court, can that be turned into a case to determine the mental capacity of the defendant? When he doesn't raise the question? We have procedures for that purpose. We have a Mental Health Commission, for civil commitment. Can this man be committed in a criminal case where he has been found competent to stand trial and where he wants to enter a plea of guilty to the offense? [fol. 16] Can that be converted into a case to determine the mental capacity of this defendant? Have you got any cases on that?

Mr. Altshuler. No. I don't think there is any case on it either way. I don't think the point specifically has been presented to the Court of Appeals.

The Court. Do you know if it has been presented in this court?

Mr. Altshuler. I think by indirection, or analogy, I think,

that there are situations which show that it is considered proper.

For instance, first of all, the *Durham* decision was meant to cover those persons charged with crime who have a defense against criminal responsibility. In other words, being punished as criminals for those crimes.

Now, as Your Honor is well acquainted, in the Tatum case, it is a case where the Court decided that the evidence presented on the question of insanity was not sufficient to charge the jury to that effect. In that case the Court of Appeals pointed out to the Court that——

The Court. But in all of those cases the question of the defendant's mental competency was properly before the Court. Is the question of his mehtal competency, or was it, properly before the Court in this case where he offered to enter a plea of guilty?

Mr. Altshuler. Yes, because of this: if a man has a valid defense, the Court said in the Rucker case which came down on May 26—it was slightly different because again the defendant made one statement, I think in there, that he was insane when he committed the crime. But his attorney got up and argued to the jury after the judge charged the jury—I am sorry. The attorney argued to the jury that they were not utilising the defense of insanity, that this man was guilty of the crime, but not of murder but of manslaughter. The judge then proceeded to charge the jury on the question of insanity. The Court of Appeals reversed that decision. They said counsel had no right to forego that defense of insanity.

Now in this case you have a similar situation to this extent——

[fol. 17] The Court. In that case you refer to, the defendant himself said "I must have been crazy at the time I did it."

Mr. Altshuler. That is all. And counsel representing the defendant rejected that.

In this case let us take the same situation and see what happens to it. Say counsel in this case had suggested no defense of insanity, as he did by offering the plea of guilty. That would be subject to an attack as ineffective assistance of counsel in our opinion for this reason: He had a report in testimony of a psychiatrist that at the time of the com-

mission of the crime this man was not legally responsible for that act.

Now, as Your Honor may recall, I think in the *Liles* case, an attorney came up and asked for a mental examination, also over in the Municipal Court. The judge said you haven't made out a prima facie showing. Then the attorney turned around and said, after a consultation with his client, we now offer to plead guilty. They appealed that decision. The Court of Appeals reversed. They said there is a serious question in our mind that counsel can first raise the question of a mental examination and then when that is rejected by the court turn around and let the man plead guilty.

And that is what counsel was in effect doing in this case. He had testimony which he could offer and he didn't offer it but the Government offered it to the court showing that this man was definitely insane at the time of the commission of the crime. The report clearly shows it and the testimony clearly shows it. Counsel had no right to abandon that defense, and to offer to plead that man guilty. He would have been considered ineffective and subject to reversal. If the Court of Appeals did that on a motion merely for a mental examination, then they certainly would have done it on a conviction.

As far as the due process, this man has a right to habeas corpus any time.

The Court. He says he is not raising the question of his mental condition. Probably he couldn't get out on habeas corpus as to his mental condition. The issue here is: Was he properly committed in the first place?

[fol. 18] Mr. Altshuler. There was some evidence before the court that this man at the time of the commission of the crime was of unsound mind, a specific report from the psychiatrist and testimony. No court could look at that record and ignore it and allow the man to plead guilty when he knows that he had a lawful defense to the crime. No counsel can offer to plead a client guilty when he knows he has a lawful defense to that crime.

Mr. Arens. May I answer very briefly, your Honor?

The Court. Yes.

Mr. Arens. If your Honor please, the difficulties appear to arise from the application of *Clark* v. *United States*,

which was cited by counsel for the Government, and that, as Your Honor will probably recall, was prosecution for murder in the first-degree in which defendant from the witness stand deliberate asserted that he had been insane at the time of the crime, and the Court of Appeals out of a careful concern for the preservation of human life in a situation so precarious reversed and declared that the defense of insanity thus raised in the District Court could not be abandoned.

The *Williams* case clearly and unequivocally shows that the civil commitment law was established to prevent improvident commitment, that a person who deserves commitment on a lifetime basis by and large should be entitled to a careful investigation by the Mental Health Commission, before the District Court with a jury if requested.

And surely, the Court of Appeals made it as plain as it could in *Williams* v. *Overholser* that there could be no shortcutting of these particular procedures without undercutting the basic liberties of us all.

And may I say this: If municipal courts, or for that matter district courts, in petty criminal cases were to be permitted to act as their own advocates and call witnesses as to the sanity or insanity of the individual defendant, then surely they would be conducting a trial within a trial, the basic deprivation inflicted or threatened to be inflicted under these circumstances being commitment to a mental hospital, and not commitment to a prison, and under these circumstances surely the defendant would be entitled to notice, [fol. 19] he would be entitled to free psychiatrists at government expense who might be able to say no, he was not insane at the time of the crime. He has a right to plead guilty, and certainly no such facilities were afforded to the defendant in this instance.

* * * * * * *

The Court. I don't believe that the Municipal Court had a right to convert this proceeding into a civil commitment proceeding, which is what it did. Therefore, I don't think the Municipal Court had jurisdiction to commit him to St. Elizabeths. I will grant the writ.

[fol. 20] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Habeas Corpus No. 130-60

FREDERICK C. LYNCH,

v.

WINFRED OVERHOLSER

ORDER—June 27, 1960

This matter came before the Court on a petition for a writ of habeas corpus and for other relief, and respondent's Return and Answer thereto; and upon consideration thereof, and of oral argument in open court, the petitioner being present, and petitioner and repondent being represented by counsel, the Court finds:

(1) Petitioner was charged with passing bad checks in Municipal Court proceedings; he initially entered a plea of not guilty and subsequently attempted to change his plea to one of guilty;

(2) the Municipal Court refused to permit the petitioner to enter a guilty plea notwithstanding the fact that it had found petitioner competent to participate in the proceedings after mental examination;

(3) the Municipal Court thereupon heard evidence upon the charges over the petitioner's objection; the evidence offered by the government as part of its case in chief included the testimony of one physician representing the District of Columbia General Hospital Psychiatric Division who testified that the petitioner was mentally competent to stand trial on the charges then pending against him but that the crimes of which the petitioner was charged were the product of mental illness;

[fol. 21] (4) no testimony was offered by the petitioner either with respect to the offenses charged against him or his mental condition at the time said offenses were committed;

(5) the Municipal Court thereupon entered a judgment of acquittal by reason of insanity and ordered the petitioner

committed to St. Elizabeths Hospital, pursuant to 24 D. C. Code, Section 301, as amended;

(6) the Municipal Court lacked jurisdiction to effect such a commitment and thereby permit the government to obtain commitment of the petitioner as of unsound mind by use of a criminal proceeding in substitution for civil commitment procedures established by law;

(7) that petitioner, therefore, is illegally detained at St. Elizabeths Hospital.

Wherefore, it is this 27th day of June, 1960

Ordered that the writ of habeas corpus shall issue and the petitioner be restored to his liberty unless within ten days from the date of this Order, or such extension thereof as may be granted by this Court for good cause shown, civil proceedings for the commitment of the petitioner shall be instituted, in which event the petitioner shall remain in the custody of the respondent until final determination of said civil proceedings.

Joseph C. McGarraghy, Judge.

N. D.C. Gen
US 7736'59
No. .....

UNITED STATES

Frederick C. Lynch 3070 Liv.
Terr N. W.

CR 236 314

CHECK LAW
ACT OF JULY 1, 1902

Witnesses:
A. P. Ennis Sheraton Carlton Hote
Paul Pierpont 923 16th St NW
Paris Pully same
E. F. Crafton Check Sq.

Cont 12/3/51

The Court Reports Mental Examination of the Prisoner

To waive right to be represented by atty.
See US 7737 57

R47

See Inside

Cont 12/17/51
Reg of Govt
Submitted

SEE ATTACHED LETTER SETTING FORTH THE RESULTS OF THE MENTAL EXAMINATION AND OBSERVATION OF THE DEFENDANT.

Cont 12/15/59
Reg of Govt
No Counsel
Committed

Cont 12/27/51
Reg of Govt
Committed

Judgment Not Guilty by Reason of Insanity
Committed

Joseph M Smith

FILED
JUL 8 1960
HARRY M. HULL, Clerk

[Vol. 22]

21

District of Columbia } ss: IN THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA October Term, A. D. 19 59

[fol. 23]

22 M.C. 130-61

Cliver Cauch, Attorney of the United States in and for the District of Columbia, who, for the said United States, prosecutes in this behalf, by M. R. Dimit, one of his assistants, comes here into Court, at the District aforesaid, on the 6th day of November, in the year of our Lord one thousand nine hundred and 59, in this said Term, and for the said United States, gives the Court here to understand and be informed, on the oath of one E. P. Grafton that one Frederick C. Lynch

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late of the District aforesaid, on the 21st day of October NOV 6 1959 in the year of our Lord one thousand nine hundred and 59 DIST. & SES. Court at the District aforesaid, and within the jurisdiction of this Court, with intent to defraud, did make, draw, utter, and deliver to one Allen P. Ennis, a certain paper writing in the form of a bank check upon a certain banking institution doing business in Washington, under the name and style of Riggs National Bank, for the payment of money of the value of $50.00 dollars and cents in the national currency of the United States of America, knowing at the time of said making, drawing, uttering, and delivering of said check that he, the said Frederick C. Lynch, did not have sufficient funds in or credit with the bank for the payment of said check in full upon its presentation; and he, the said Frederick C. Lynch, did not pay the said Washington Sheraton Corp. t/a Sheraton Carlton Hotel, the holder of said check, the amount due thereon within five days after receiving notice that said check had not been paid by said bank;

against the form of the statute in such case made and provided, and against the peace and Government of the United States of America.

Whereupon, the said Attorney of the United States, who, in this behalf, prosecutes for the said United States, in manner and form as aforesaid, prays the consideration of the Court here in the premises, and that due proceedings may be had against the said Frederick C. Lynch in this behalf to make h in answer to the said United States touching and concerning the premises aforesaid.

Cliver Cauch
Attorney of the United States in and for the District of Columbia.

By M. R. Dimit
His said Assistant.

E. P. Grafton
Personally appeared before me this 6th day of November, A. D. 19 59, and being duly sworn according to law doth declare and say that the facts as set forth in the foregoing information are true.

M. R. Dimit
Assistant Attorney of the United States in and for the District of Columbia.

[fol. 24] Filed July 8, 1960. Harry M. Hull, Clerk

ATTACHMENT TO INFORMATION

GOVERNMENT OF THE DISTRICT OF COLUMBIA
D. C. General Hospital
19th Street and Massachusetts Avenue, S. E.
Washington 3, D. C.

December 4, 1959.

Unsound Mind Was Set 12-17-59
Now 12-9-59

Attorney J. M. Jones

H. C. 130-60

Re: Frederick Lynch, US 7737 & 36-59

Mr. Walter Bramhall,
Criminal Clerk's Office,
Municipal Court,
Washington 1, D. C.

Attention: Mr. Robert Ernst.

DEAR SIR:

This patient was admitted to the District of Columbia General Hospital on November 6, 1959.

Psychiatric examination reveals Mr. Lynch to be of unsound mind, unable to adequately understand the charges and incapable of assisting counsel in his own defense.

Mr. Lynch has shown some improvement since his admission to this hospital but it is recommended that he be committed to a psychiatric hospital for further care and treatment.

Sincerely yours, James A. Ryan, M.D., Assistant Chief Psychiatrist.

A true copy. Test: Walter F. Bramhall, Clerk, Municipal Court, D. C. By Joseph M. Burton, Deputy Clerk.
JAR:amt

[fol. 25] Filed July 8, 1960. Harry M. Hull, Clerk

ATTACHMENT TO INFORMATION

GOVERNMENT OF THE DISTRICT OF COLUMBIA
D. C. General Hospital
19th Street and Massachusetts Avenue, S. E.
Washington 3, D. C.

H. C. 130-60

December 28, 1959.

Re: Frederick Lynch, US 7737 & 36-59

Mr. Walter Bramhall,
Criminal Clerk's Office,
Municipal Court,
Washington 1, D. C.

Attention: Mr. Robert Ernst.

DEAR SIR:

This patient was admitted to the District of Columbia General Hospital on November 6, 1959. On December 4, 1959 he was reported to the Court as being of unsound mind, and unable to understand the charges against him.

Since the time of our report, Mr. Lynch has shown some improvement and at this time appears able to understand the charges against him, and to assist counsel in his own defense. In my opinion he was suffering from a mental disease, i.e., a manic depressive psychosis, at the time of the crime charged. Such an illness would particularly affect his judgment in regard to financial matters, so that the crime charged would be a product of this mental disease.

At the present time Mr. Lynch appears to be in an early stage of recovery from manic depressive psychosis. It is thus possible that he may have further lapses of judgment in the near future. It would be advisable for him to have a period of further treatment in a psychiatric hospital.

Sincerely yours, James A. Ryan, M.D., Assistant Chief Psychiatrist.

A true copy. Test: Walter F. Bramhall, Clerk, Municipal Court, D. C. By Joseph M. Burton, Deputy Clerk.

JAR:acb

US 7737-'59

Cont 12/17/59

CHECK LAW

Cont 12/15/59

Cont 12/29/59

Cont 12/3/59

Judgment

FILED

Joseph M Burton

25

US 7737-'59

IN THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA

District of Columbia } ss: November Term, A. D. 1959

HC 130-60

Oliver Gasch, Attorney of the United States in and for the District of Columbia, who, for the said United States, prosecutes in this behalf, by M. R. Davis, one of his assistants, comes here into Court, at the District aforesaid, on the 6th day of November, in the year of our Lord one thousand nine hundred and 59, in this said Term, and for the said United States, gives the Court here to understand and be informed, on the oath of one Det. Sgt. Edwin P. Gunther that one Frederick Cornelius Lynch

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JUN 8 - 1960
HARRY M. HULL, Clerk

late of the District aforesaid, on the 20th day of October in the year of our Lord one thousand nine hundred and 59 at the District aforesaid, and within the jurisdiction of this Court, with intent to defraud, did make, draw, utter, and deliver to one Allen P. Ennis, a certain paper writing in the form of a bank check upon a certain banking institution doing business in Washington, D.C., under the name and style of Riggs National Bank, for the payment of money of the value of 50.00 dollars and cents in the national currency of the United States of America, knowing at the time of said making, drawing, uttering, and delivering of said check that he, the said Frederick Cornelius Lynch, did not have sufficient funds in or credit with the bank for the payment of said check in full upon its presentation; and he, the said Frederick Cornelius Lynch, did not pay the said Allen P. Ennis /Sheraton Corp. the Washington Sheraton Corp t/a the Hotel holder of said check, the amount due thereon within five days after receiving notice that said check had not been paid by said bank;

against the form of the statute in such case made and provided, and against the peace and Government of the United States of America.

Whereupon, the said Attorney of the United States, who, in this behalf, prosecutes for the said United States, in manner and form as aforesaid, prays the consideration of the Court here in the premises, and that due proceedings may be had against the said Frederick C. Lynch in this behalf to make his answer to the said United States touching and concerning the premises aforesaid.

Oliver Gasch
Attorney of the United States
in and for the District of Columbia.

By M. R. Davis
His said Assistant.

Personally appeared E.P. Gunther before me this 6th day of November, A. D. 1959, and being duly sworn according to law doth declare and say that the facts as set forth in the foregoing information are true.

Rec'd 622 E.x. — M. R. Davis
Assistant Attorney of the United States
in and for the District of Columbia

[fol. 28] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Habeas Corpus No. 130-60

FREDERICK C. LYNCH, PETITIONER,

vs.

WINFRED OVERHOLSER, RESPONDENT

STIPULATION—Filed July 8, 1960

It is hereby stipulated by counsel for the petitioner and counsel for the respondent in the above-captioned case, that certified copies of the Municipal Court Informations in the cases of *United States* v. *Lynch* (Municipal Court Nos. U.S. 7736-59 and 7737-59) and the certified copies of the hospital reports attached to U.S. 7736-59, be filed in this case, Habeas Corpus No. 130-60, and then be transmitted forthwith to the Court of Appeals, together with this stipulation, as a supplemental record on appeal.

Oliver Gasch, per MRD, United States Attorney. Carl W. Belcher, per MRD, Assistant United States Attorney. Maurice R. Dunie, Assistant United States Attorney. Attorneys for Respondent. Richard Arens, per MRD, Attorney for Petitioner.

Dated July 8, 1960.

Proof of service (omitted in printing)

[fol. 29] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Habeas Corpus No. 130-60

FREDERICK C. LYNCH, Petitioner,

vs.

WINFRED D. OVERHOLSER, Respondent

NOTICE OF APPEAL—Filed July 1, 1960

Notice is hereby given this 1st day of July, 1960, that the respondent, Winfred D. Overholser, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 27th day of June, 1960 in favor of the petitioner, Frederick C. Lynch, against said respondent, Winfred D. Overholser.

Oliver Gasch, per MRD, Attorney for Respondent.
United States Attorney.

Proof of service (omitted in printing)

[fol. 30] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 15859

WINFRED OVERHOLSER, SUPERINTENDENT, St. Elizabeths Hospital, Appellant

v.

FREDERICK C. LYNCH, Appellee

Appeal from the United States District Court for the District of Columbia Circuit

OPINION—Decided January 26, 1961

Mr. Maurice R. Dunic, Assistant United States Attorney, with whom Messrs. Oliver Gasch, United States Attorney, and Carl W. Belcher, Assistant United States Attorney, were on the brief, for appellant.

Mr. Richard Arens, with whom Messrs. Lawrence Speiser and James Mitchell Jones were on the brief, for the appellee.

Before Wilbur K. Miller, Chief Judge, and Edgerton, Prettyman, Bazelon, Fahy, Washington, Danaher, Bastian and Burger, Circuit Judges, sitting in banc.

Bastian, Circuit Judge, with whom Wilbur K. Miller, Chief Judge and Prettyman, Washington, Danaher and Burger, Circuit Judges, concur:

On November 6, 1959, appellee [defendant in the trial court] came before the Municipal Court for the District [fol. 31] of Columbia on informations charging two violations of the bad check law, § 22-1410 D. C. Code (1950). Pursuant to § 24-301 (a) D. C. Code (Supp. VIII, 1960), the trial judge ordered appellee committed to District of Columbia General Hospital for mental observation, and appellee entered that hospital the same day. A report from the hospital was received by the court on December 4, 1959, stating that appellee was at that time

incompetent to stand trial. Under the provisions of §24-301(a), the trial judge ordered that appellee remain at the hospital for treatment. On December 28, 1959, a second report was received from the hospital stating that appellee had improved and was then competent to stand trial. The psychiatrist who wrote the report went on to state that, in his opinion, appellee was a manic-depressive, manic type, and that this disease particularly affects financial judgment. He further stated that, in his opinion, appellee's crimes were the product of this mental disease or defect and that appellee required further treatment to insure against repetition of the offenses. This report was in accordance with our ruling in *Winn* v. *United States, infra.*

On December 29, 1959, appellee was brought to trial and was represented by counsel. When his case was called, appellee sought to withdraw the not guilty plea which he had entered earlier and to enter a plea of guilty. The trial judge, having before him the report that appellee was not mentally competent when the acts were committed, refused to allow a change in the plea and proceeded to conduct a trial on the charges. During the course of this trial, the psychiatrist who had examined appellee testified,[1] over [fol. 32] objection, as to appellee's mental condition at the

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[1] In *Berger* v. *United States,* 295 U.S. 78, 88 (1935), the Supreme Court said:

> "The United States Attorney is representative . . . of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but *that justice shall be done.* As such he is in a peculiar and very definite sense the servant of the law, the two-fold aim of which is that guilt shall not escape or innocence suffer . . . ." [Emphasis supplied.]

We think that the aim "that justice shall be done" applies at least equally to the courts. We therefore agree with the Government that it does not matter whether the psychiatrist was called by the court or by the Government; in either case, he was properly called.

time of the commission of the offenses. At the trial, it appears that appellee took the stand and denied essential elements of the crimes with which he was charged. At the conclusion of the case, the trial judge found the appellee not guilty by reason of insanity and, pursuant to §24-301(d) D. C. Code (Supp. VIII, 1960), ordered him committed to St. Elizabeths Hospital. No appeal was taken.

On June 13, 1960, appellee filed a petition for a writ of habeas corpus in the District Court, to test the legality of his detention at St. Elizabeths. That court held that the Municipal Court was without jurisdiction to commit appellee in the manner described above and, on June 27, 1960, ordered that he be released unless civil commitment proceedings were instituted within ten days of the date of the order.

At the outset of the case in the Municipal Court, the trial judge was faced with the clear mandate of §24-301(a), which reads in pertinent part:

> "Whenever a person is . . . charged by information . . . with an offense and, prior to the imposition of sentence . . . it shall appear to the court from the court's own observations . . . that the accused is of unsound mind or is mentally incompetent so as to make him unable to understand the proceedings against him or properly to assist in his own defense, the court may order the accused committed to . . . [a] mental hospital . . . for [a] reasonable period . . . for examination and observation and for care and treatment [fol. 33] if such is necessary . . . . If . . . the superintendent of the hospital . . . shall report that in his opinion the accused is of unsound mind or mentally incompetent, *such report shall be sufficient to authorize the court to commit . . . the accused to a hospital for the mentally ill unless the accused or the Government objects,* in which event, the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial . . ." [Emphasis supplied.]

This statute is similar to 18 U.S.C. § 4244 (1958), the major difference being that, under the latter section, a judicial determination, after hearing, must always be made, following receipt of the psychiatrist's report. The trial judge thus properly committed appellee to D. C. General Hospital for observation and, after receipt of the December 4 report, for treatment.

When the report of December 28 was received, the trial judge, pursuant to § 24-301(b), properly held that appellee was then competent to stand trial. That section reads in pertinent part:

> "Whenever an accused person confined to a hospital for the mentally ill is restored to mental competency in the opinion of the superintendent . . . the superintendent shall certify such fact . . . and *such certification shall be sufficient to authorize the court to enter an order thereon adjudicating him to be competent to stand trial,* unless the accused or the Government objects. . . ." [Emphasis supplied.]

The trial judge thus, on December 29, found appellee competent to stand trial, in the manner in which he originally found him incompetent, both actions being taken pursuant to clear and unambiguous statutory mandates.

We do not quarrel with the operation and effect of § 24-301(a) and (b); indeed, we heartily endorse them. For a defendant who is subjected to trial while mentally incompetent to understand the charges against him and unable to assist in his own defense has not really been [fol. 34] tried at all, certainly not in the sense of a "fair" trial, which is the basic element of the due process guaranteed by the Constitution. See the colloquy, at a hearing on S. 850, 80th Cong., 2d Sess. (1948), between Judge Magruder and Senator Wiley, quoted by this court with approval in *Gunther* v. *United States,* 94 U.S.App.D.C. 243, 245, 215 F.2d 493, 495 (1954).

Under a section of a statute which is not attacked here, appellee was properly found incompetent to stand trial and committed to a mental hospital. Subsequently, under

another section of the same statute, he was found competent to stand trial and counsel was appointed for him. At this point, immediately before his trial was scheduled to begin, appellee sought to withdraw the not guilty plea which had been entered previously and to enter a plea of guilty. The trial judge did not permit the plea to be changed and proceeded to try the case. Rule 9, Mun. Ct. Crim., states:

> "A defendant may plead not guilty, guilty. . . . The court *may* refuse to accept a plea of guilty, and shall not accept the plea without first determining that the plea is made voluntarily with understanding of the nature of the charge . . . ." [Emphasis supplied.]

This is an exact copy of Fed. R. Crim. P. 11. Appellee contends that the "shall not" clause modifies the first clause of this rule, with the net effect that the only circumstance in which a plea of guilty is properly refused is that outlined in the second clause. We do not think this is the case. In *Tomlinson* v. *United States*, 68 App. D.C. 106, 93 F.2d 652, *cert. denied*, 303 U.S. 646 (1937), this court said:

> "An application by a defendant to change his plea is addressed to the sound discretion of the court, and the action of the court will not be disturbed, unless there has been an abuse of that discretion." 68 App. D.C. at p. 108, 93 F.2d at p. 654.

[fol. 35] We think the above language is clearly consistent with the Municipal Court's Rule 9. The permissive clause beginning with "may" indicates a general discretion in the court, while the mandatory clause beginning with "shall not" indicates one circumstance where the court has no discretion but must refuse to permit the guilty plea.

We turn now to the issue of whether the trial judge abused his discretion in refusing to permit the guilty plea.

Procedure markedly similar to that called for by 18 U.S.C. § 4244 is outlined in § 24-301(a) and (b) of the D. C. Code, and this court has consistently held that an examination conducted under § 4244 to determine a defendant's competency to stand trial must be broad enough to in-

clude an inquiry into his mental condition at the time the act in question was committed. *Winn* v. *United States*, 106 U.S.App.D.C. 133, 270 F.2d 326 (1959); *Calloway* v. *United States*, 106 U.S.App.D.C. 141, 270 F.2d 334 (1959). It would be illogical and inconsistent in the extreme for this court now to hold that the doctrine of *Winn* and *Calloway* does not apply to § 24-301(a) and (b) of the D. C. Code. Therefore, the psychiatrist's reports which were before the Municipal Court properly included evaluation of appellee's mental condition at the time the acts complained of were committed.

Perhaps we can not say that at that point the trial judge *knew* that appellee was not guilty of the crimes charged by reason of insanity but we certainly can say that he had every reason, at that point, to believe that there was grave doubt about appellee's criminal culpability and that the issue should be litigated. The preceding statement, of course, is based on the *Davis* rule[2] that insanity is not strictly an affirmative defense and can be raised by either the court or the prosecution.

[fol. 36] In *Carter* v. *United States*, —— U.S.App.D.C. ——, 283 F.2d 200 (1960), we considered the converse of the present problem, that is, whether it was error for the trial judge to *fail* to order on his own motion a pre-trial mental examination of the defendant. Holding that that was a matter for the judge's discretion, we went on to say:

> "But the existence of these possibilities [civil commitment and transfer of the prisoner under 18 U.S.C. § 4245] does not relieve the *bench and bar of the responsibility of endeavoring to reach at the earliest possible stage—ideally prior to trial and sentence—the approach to a particular case which appears most just and appropriate, having regard to the individual's mental condition, his history, and the possibility of rehabilitating him and restoring him to usefulness in the community.*" [Emphasis supplied.]

This statement would seem squarely applicable to the present case. "Just result": It will be shown later that a criminal sentence can in no wise be considered "just

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[2] 160 U.S. 469 (1895).

treatment" in such a case. "The individual's mental condition": A psychiatrist's report indicating that appellee was a sick man in need of treatment was before the judge. "Rehabilitation" and "restoration to usefulness": These considerations have been prime movers in the development of our present law of criminal insanity; certainly hospitalization was the very thing needed by appellee.[3] Certainly, by all the criteria expressed in *Carter*, not only was the action here far from an abuse of discretion, but also it would seem affirmatively to have been the best possible decision, if not the only just one.

In *Holloway* v. *United States*, 80 U.S.App.D.C. 3, 4-5, 148 F.2d 665 (1945), this court said: "Our collective conscience does not allow punishment where it cannot impose blame." In *Douglas* v. *United States*, 99 U.S.App.D.C. [fol. 37] 232, 239 F.2d 52 (1956), we clearly pointed to the distinction between punishment for criminal conduct and treatment for mental disease, and we indicated our awareness of the necessity for determining which of the two procedures is appropriate for a particular case.

> "That one who commits a wrong by reason of insanity must be acquitted is so well-settled that no one questions it . . . *Only the guilty are to be punished. For the merely dangerous, society provides other treatment.*" [Emphasis supplied.] *Blunt* v. *United States*, 100 U.S.App. D.C. 266, 278, 244 F.2d 355, 367 (1957).

In *Williams* v. *United States*, 102 U.S.App.D.C. 51, 57-58, 250 F.2d 19, 25-26 (1957), we clearly stated that imprisonment was *wrong* in the case of a mentally ill person, as well as a remedy which could not possibly secure the community against repetition of the offense. "Under our criminal jurisprudence, mentally responsible law breakers are sent to prison; those who are not mentally responsible are sent to hospitals. . . . It is both wrong and foolish to punish where there is no blame. . . . The community's security may be better protected by hospitalization . . . than by imprisonment."

The cases above cited establish almost a positive duty

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[3] At the present time, appellee has responded to treatment and has been conditionally released.

on the part of the trial judge not to impose a criminal sentence on a mentally ill person. In this case appellee had never before been convicted of a criminal offense and had previously served honorably as a commissioned officer in the armed forces. We suggest it would have been a plain abuse of discretion for the trial judge, in these circumstances, to allow a plea by which society would brand such a person with a criminal record. Appellee argues that the plea of guilty had been carefully considered by competent counsel and by appellee, who had been judicially declared competent to stand trial and to assist in his own defense. We think that, for the reasons stated above, this decision was one which appellee and his counsel did not [fol. 38] have an absolute right to make. We might add that the foregoing reasoning omits consideration of *Clark* v. *United States*, 104 U.S.App.D.C. 27, 259 F.2d 184 (1958), and *Tatum* v. *United States*, 88 U.S.App.D.C. 386, 190 F.2d 612 (1951) where we held that trial counsel had no right to concede his client's sanity; and *Plummer* v. *United States*, 104 U.S.App.D.C. 211, 260 F.2d 729 (1958), where we held, in effect, that failure of trial counsel to raise the defense of insanity was ineffective assistance of counsel under 18 U.S.C. § 2255. Appellee's argument on this point impliedly calls for reversal of *Plummer*, if not *Tatum* and *Clark* as well. This we are unwilling to do. Society has a stake in seeing to it that a defendant who needs hospital care does not go to prison.

In the light of the previous discussion in this opinion, we are convinced that criminal insanity is a matter of grave public concern, particularly with respect to the problem of rehabilitation. Once it is established that the defendant did in fact commit the act charged but that he was insane at the time, then the problem is one of rehabilitation. In this context, the only issue is whether the defendant will go to jail for punishment or to a hospital for treatment. In either event he will be confined, deprived of his absolute liberty.

By its very nature, a jail sentence is for a specified period of time, while, by its very nature, hospitalization, to be effective, must be initially for an indeterminate period. This difference is not fatal because of the overriding interest of the community in protecting itself and its

interest in rehabilitating the defendant himself. Certainly a man is not truly free if he has a sickness which results in his continual criminal activity, which, in turn, leads to a life-time in jail, with only short breaks between sentences. In the case before us, had Lynch not been treated, he might have been in and out of jail for the rest of his life on bad check charges. Now that he [fol. 39] has received treatment, he is well on the way to unconditional release, without the probability of repeat offenses.

Therefore, once it is determined that a defendant is to be hospitalized for treatment of a mental disease or defect, further consideration of the criminal penalty provided by statute becomes irrelevant, for any and all purposes. The length of his hospitalization must depend solely on his need (or lack of it) for further treatment. It is true that he may be hospitalized for a longer time than the maximum jail sentence provided by statute. It is equally true that he may be released in a shorter time than the minimum sentence. Hospitalization, in this respect, bears no relation to a jail sentence. A jail sentence is punitive and is to be imposed by the judge within the limits set by the legislature. Hospitalization is remedial and its limits are determined by the condition to be treated. As we said in *O'Beirne* v. *Overholser*, No. 15,634 decided by this court November 23, 1960, —— U.S.App.D.C. ——, —— F.2d ——:

> "[A person committed to St. Elizabeth's under § 24-301 after a verdict of not guilty by reason of insanity] is not a 'prisoner'; he is not under 'sentence.' . . . He is an 'accused person confined to a hospital for the mentally ill,' to quote the words of the statute."

In *Overholser* v. *Russell*, —— U.S.App.D.C. ——, 283 F.2d 195 (1960), we said that mandatory commitment under § 24-301(d) was proper even in the case of non-violent crimes (coincidentally, bad check charges) because, even in the case of non-violent crimes, society has a great interest in protecting itself.

Once a man has been committed to a hospital under § 24-301(d), we do not think, as did the District Judge, that the Government should thereafter be forced to prove

his insanity as the price of continuing treatment. The remedy afforded by habeas corpus under present well [fol. 40] settled law permits a person so confined to obtain his release through the courts by establishing that he has met the tests for such relief laid down in the governing statute.[4]

A number of factual questions have been raised by counsel in brief and in argument as to what actually occurred in the trial court. Unfortunately no reporter was present at the Municipal Court proceedings, but this does not in any way affect the jurisdiction of the Municipal Court to take the action challenged. A presumption of regularity attaches to the proceedings of a trial court in the absence of an appeal, and we are bound by that presumption, unless and until a showing has been made that the judgment is so defective as to be subject to collateral attack, under the rules applicable in *habeas corpus*. See *O'Beirne* v. *Overholser, supra*. No such showing has been made here.

We hold that the Municipal Court's action was correct as to all the points properly raised by the *habeas corpus* proceeding, and therefore the order of the District Court is

Reversed.

FAHY, Circuit Judge, with whom EDGERTON and BAZELON, Circuit Judges join, dissenting: Frederick C. Lynch, appellee, petitioned the District Court for a writ of habeas corpus to obtain his release from restraint at St. Elizabeths Hospital. Appellant, the Superintendent of the Hospital, interposed as legal basis for the restraint an order of the Municipal Court of the District of Columbia of December 29, 1959, committing appellee to the Hospital pursuant to the provisions of 24 D.C. Code § 301(d), as amended, "after having been found not guilty by reason [fol. 41] of insanity on charges of Passing Bad Checks." The charges were misdemeanors involving two checks of $50 each cashed in October 1959.

As a result of the District Court proceedings Judge

[4] Cf. *Hill* v. *United States*, 206 F.2d 204, 207 (6th Cir.), cert. denied, 346 U.S. 859 (1953).

McGarraghy concluded that the Municipal Court lacked jurisdiction to "permit the government to obtain commitment of the petitioner as of unsound mind by use of a criminal proceeding in substitution for civil commitment procedures established by law." He held that petitioner, therefore, was illegally detained at the Hospital and concluded as follows:

> [T]hat the writ of habeas corpus shall issue and the petitioner be restored to his liberty unless within ten days from the date of this Order, or such extension thereof as may be granted by this Court for good cause shown, civil proceedings for the commitment of the petitioner shall be instituted, in which event the petitioner shall remain in the custody of the respondent until final determination of said civil proceedings.

I agree with Judge McGarraghy as to the invalidity of the commitment, and in the solution he reached above set forth. Both the public and the private interests are protected by the course he directs: The individual concerned is held no longer by virtue of the invalid trial, and the public as well as the private interests are protected by conditioning the individual's release upon the outcome of future proceedings under our Code, 21 D.C. Code § 306 (1951), for the commitment of persons of unsound mind.

The reasons I think the Municipal Court commitment was invalid are first stated. As the result of pretrial proceedings appellee was found competent to stand trial. He was represented by counsel. When the cases were called for trial he sought to plead guilty, choosing to accept what punishment might be imposed for the two misdemeanors. The court refused to permit the guilty pleas, obviously believing there was a substantial question [fol. 42] whether appelle was of sound mind when the checks were cashed. Thus a serious question arose involving the right of a person accused of a misdemeanor, who is competent to plead guilty and is represented by counsel, not to be compelled by the court to enter a plea of not guilty. I do not find it necessary to resolve this most difficult ques-

tion, because even if it be assumed that the Municipal Court could compel this, and validly did so in this case, nevertheless I think the commitment which eventuated from this trial was invalid for other reasons.

Upon refusing the guilty plea the court then brought on the charges for trial over appellee's objection. We have no transcript of what occurred, and so we cannot accurately reconstruct the events. In this respect the case resembles *O'Beirne* v. *Overholser*, —— U.S. App. D.C. ——, —— F.2d ——. As we could not say there, so we cannot say here, that a fair trial was held in the Municipal Court, with opportunity for appellee to meet the government's case. As near as we can make out from the data we have, the case was turned into an inquiry concerning appellee's sanity at the time the checks were cashed. The evidence consisted of the testimony of a psychiatrist that appellee was of unsound mind at that time. Appellee and his counsel were thus confronted with a serious situation affecting appellee, and the record does not show they were given a reasonable opportunity to cope with it by showing appellee was not of unsound mind when the checks were cashed. In the absence of that opportunity, there could be no valid finding that he was not guilty by reason of insanity. Such data as is before us supports the finding of Judge McGarraghy that the Municipal Court proceeding was not a valid trial but an invalid commitment proceeding. In the absence of a valid trial and acquittal by reason of insanity, there could be no valid commitment to St. Elizabeths under section 24-301(d).

[fol. 43] In *O'Beirne* we remanded for a District Court hearing and findings respecting the fairness of the Municipal Court trial. But the preferable remedy, especially where, as here, more than a year has passed in which the petitioner has been in restraint, is not to order a second District Court hearing about what occurred at the Municipal Court trial, as we did in *O'Beirne*, but to set aside the commitment.

I, of course, agree with the majority that a person

of unsound mind who is charged with crime is not to be sent to prison if the alleged crime was due to his unsoundness of mind. Instead, he should be treated for his condition. See the *Holloway*, *Douglas*, *Blunt*, and *Williams* decisions referred to in the majority opinion. And I readily agree also that criminal insanity is a matter of grave public concern, particularly with respect to the problem of rehabilitation. But these sound general principles are not dispositive of the particular problem raised by the continued restraint imposed upon Lieutenant Colonel Lynch.

In his petition for the writ of habeas corpus appellee does not allege present soundness of mind. He attacks his detention solely on the ground of the invalidity of his commitment.[1] As already stated, I agree with Judge McGarraghy that unless civil proceedings for appellee's commitment are now undertaken, he is entitled to be released on that ground. Moreover, if the judgment of Judge McGarraghy is sustainable upon a ground independent of the one asserted by appellee, it should be affirmed. I think such independent ground does appear and that it deprives the issue of the validity of the Municipal Court proceedings of critical significance. Even if the Municipal Court trial were in all respects valid, followed by a valid mandatory commitment under section [fol. 44] 301(d), appellee's detention would no longer be sustainable on the basis of that commitment.

Section 301(d)—the mandatory commitment provision—and section 301(e)—governing subsequent release—are part of a general plan and are to be read in relationship of one with the other. It is plain that Congress was concerned that an accused person might escape prison by reason of his defense of insanity and be immediately released upon the community, although he had engaged in dangerous conduct. This is what Congress sought to prevent. There is no reason to suppose Congress intended that a person not accused of any dangerous offense and not found to be of unsound mind should be held indefinitely against his will in a mental institution because believed

[1] See *Barry* v. *Hall*, 68 App.D.C. 350, 98 F.2d 222.

to be a person of bad character; that is, Congress was not establishing a system of "protective" or "preventive" custody of persons neither dangerous nor found to be of unsound mind.

An important factor to be remembered in interpreting the valid scope of section 301(e) is that an acquittal by reason of insanity, which leads to commitment under section 301(d), is not an adjudication of insanity. It is well settled that such acquittal means only that sanity has not been established beyond a reasonable doubt. *Davis* v. *United States*, 160 U.S. 469; *Isaac* v. *United States*, —— U.S. App. D.C. ——, —— F.2d ——; *Carter* v. *United States*, 102 U.S. App. D.C. 227, 252 F.2d 608; *Douglas* v. *United States*, 99 U.S. App. D.C. 232, 239 F.2d 52.[2] One in appellee's position not only has not been charged with a dangerous offense, but has not been adjudged to be unsound mind.

The dangerousness referred to in section 301(e), upon which continued restraint is conditioned, as I suggested in my concurring opinion in *Rogsdale* v. *Overholser*, —— [fol. 45] U.S. App. D.C. ——, 281 F.2d 943, 949, and see Judge Bazelon's concurring opinion in *Overholser* v. *Russell*, —— U.S. App. D.C. ——, 283 F.2d 195, 198, is related to conduct comparable to the offense charged.[3] The offenses charged to appellee, the cashing of two "bad checks" of $50 each, were not of a dangerous character within the meaning of section 301(e). Therefore the release conditions of that section do not apply in appellee's case and his continued restraint cannot be justified under the criteria of that section. It is not of significance one way or the other that these criteria[4] are to be read through the gloss of applicable decisions of this court.[5]

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[2] And see generally Halleck, *The Insanity Defense in the District of Columbia*, 49 Georgetown L.J. 294 (1960).

[3] See also Goldstein & Katz, *Dangerousness and Mental Illness*, 70 Yale L.J. 225, 235 (1960).

[4] For unconditional release.

[5] In *Overholser* v. *Leach*, 103 U.S. App. D.C. 289, 292 257 F.2d 667, 670, it is said the person must be free from "such abnormal mental condition as would make the individual dangerous to himself or the community in the reason-

Whichever criteria are followed it remains true, I think, that Congress in section 301(e) is not concerned with persons who have engaged in any kind of unlawful conduct, however minor, but only with persons who have engaged in unlawful conduct of a dangerous character. The language used conveys the idea of physical danger to per- [fol. 46] sons and, perhaps, to property. I do not attempt to delineate precisely the boundaries fixed by the language used, but obviously they do not encompass any and every minor conflict with the law of which a person has been acquitted because of a doubt about his sanity. Had Congress intended such a broad coverage, it would have used broader language such as "likely to engage in unlawful conduct," rather than the narrow language of section 301 (e), "dangerous to himself or others."

Our jurisprudence knows no such thing in times of peace as "preventive" or "protective" custody of persons not guilty of crime and not found to be of unsound mind. Congress, of course, was aware of this and did not cloud its enactment with grave constitutional doubts by requiring a person of sound mind to be held under restraint in a mental institution on the theory he had done an act having the elements of a minor and non-dangerous offense.[6] The most serious constitutional doubts are avoided by giving the provisions of section 301(e) their natural meaning which excludes non-dangerous conduct. It fol-

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ably foreseeable future." This was approved in *Ragsdale* v. *Overholser*, —— U.S. App. D.C. ——, 281 F.2d 943. In *Overholser* v. *Russell*, —— U.S. App. D.C. ——, 283 F.2d 195, it is said the person must show (1) that he has recovered his sanity; (2) that he will not in the reasonable future be dangerous to himself or others; and (3) that the Superintendent acted arbitrarily and capriciously in refusing so to certify and to recommend unconditional release. See, however, Judge Bazelon's concurring opinion pointing out that since the issues of violence and non-violence were not presented by the record, the court's comments are dicta. Proof of arbitrariness and capriciousness is required also by *Leach*, and no less is required by *Ragsdale*.

[6] There was no finding of insanity such as underlay the assumption on which *Orencia* v. *Overholser*, 82 U.S. App. D.C. 285, 163 F.2d 763, was decided by this court.

lows that valid restraint of appellee depends upon a finding, never yet made, that he is of unsound mind [7] and [fol. 47] not upon meeting the conditions for release applicable to persons committed under section 301(d). On the issue of his present soundness of mind, appellee's prior conduct, as well as his present condition, may of course be considered insofar as relevant.[8]

I would affirm the judgment of the District Court.

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[7] The contrast of section 301(e) with the federal statutory provisions concerning continued detention of federal prisoners as set forth in 18 U.S.C. §§ 4247-48 (1958) has some significance. If upon a hearing the court for the district in which the prisoner is confined shall determine that the prisoner is insane or mentally incompetent, and that if released he will probably endanger the safety of the officers, the property, or other interests of the United States, the detention of the prisoner is authorized. Such commitment, however, shall terminate when the sanity or mental competency of the person is restored *or* when the mental condition of the person is so improved that if he be released he will not endanger the safety of the officers, the property, or other interests of the United States; that is, he is to be released if sane or mentally competent. (Emphasis added.)

[8] No doubt a hearing and determination on the question of appellee's present soundness of mind could be had in the habeas corpus proceedings. See *Stewart* v. *Overholser*, 87 U.S. App. D.C. 402, 186 F.2d 339. But appellee does not appeal from the disposition directed by Judge McGarraghy, which calls for the civil commitment procedures of the Code.

[fols. 48-50] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Habeas Corpus 130-70

No. 15,859

WINFRED OVERHOLSER, Superintendent, St. Elizabeths Hospital, Appellant,

v.

FREDERICK C. LYNCH, Appellee

Appeal from the United States District Court for the District of Columbia

Before: WILBUR K. MILLER, Chief Judge, and EDGERTON, PRETTYMAN, BAZELON, FAHY, WASHINGTON, DANAHER, BASTIAN and BURGER, Circuit Judges, sitting in banc.

JUDGMENT—January 26, 1961

This cause came on to be heard before the Court in banc on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof It is ordered and adjudged by this Court that the order of the District Court appealed from in this cause be, and it is hereby, reversed, and that this cause be, and it is hereby, remanded to the District Court for further proceedings not inconsistent with the opinion of this Court.

Per Circuit Judge Bastian.

Dated: Jan. 26, 1961.

Chief Judge Wilbur K. Miller and Circuit Judges Prettyman, Washington, Danaher and Burger concur in Judge Bastian's opinion.

Separate dissenting opinion by Circuit Judge Fahy with whom Circuit Judges Edgerton and Bazelon join.

[fol. 51] Clerk's Certificate to foregoing transcript omitted in printing

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[fol. 52] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1960

No. 1020 Misc.

FREDERICK C. LYNCH, Petitioner,

vs.

WINFRED OVERHOLSER, Superintendent, St. Elizabeths Hospital

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI —June 19, 1961.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

On Consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1046.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1961 — 637222